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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 510. 242 (240 inside)

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

JOHN H. WEIGMAN AND FREDERICK W. WEIGMAN, TRADING AS J. H. WEIGMAN AND SON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED APRIL 4, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1885.

No. 510.

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

JOHN H. WEIGMAN AND FREDERICK W. WEIGMAN, TRADING AS J. H. WEIGMAN AND SON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 UNITED STATES,
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between John H. Weigman and Frederick W. Weigman, trading as J. H. Weigman & Son, plaintiffs, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said John F. Hartranft, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this tenth day of November, A. D. one thousand eight hundred and eighty-three, and in the one hundred and eighth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To John H. Weigman and Frederick W. Wiegman, trading as J. H. Weigman and Son, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, wherein John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this thirteenth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

WM. BUTLER,
Judge.

2½ I accept service of the within citation for the within-named John H. Wiegman and Frederick Wiegman, trading as J. H. Weigman & Son, and direct the clerk to enter my appearance as their attorney.

FRANK P. PRICHARD,
Att'y for J. H. Wiegman & Son.

NOV. 13, '83.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

JOHN H. WIEGMANN AND FREDERICK W. Wiegmann, trading as J. H. Wiegmann and Son,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, set.:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of October session, 1882, No. 38.

It is thus contained:

Be it remembered that on the 15th day of November, A. D. 1882, the defendant, by his attorney, John K. Valentine, esq., appears in open court and presents a petition for a writ of certiorari, which, being read, is as follows, to wit:

4 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

The petition of John F. Hartranft, collector of customs for the district of Philadelphia, respectfully represents that a suit has been commenced by summons case against him, as defendant, by John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, in the court of common pleas No. 2, for the county of Philadelphia, in the State of Pennsylvania, to September term, 1882, No. 510.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the customs for the district of Philadelphia, the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant, as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court, to the said court of common pleas, No. , for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

J. F. HARTRANFT, *Coll.*

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 11th day of November, 1882.

[L. S.] WM. LARZELERE,
Notary Public.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him, and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Deft.

(Indorsed:) No. 38. October sessions, 1882. Circuit court United States, eastern district of Pennsylvania, in the third circuit. John H. Wiegmann et al., trading, &c., *vs.* John F. Hartranft, collector, &c. Petition for certiorari. John K. Valentine, attorney for petitioner. Filed, November 15, 1882.

5 Whereupon the court made the following order, to wit:

WIEGMANN, ET AL.
vs.
HARTRANFT, COLLECTOR, &C. } No. 38. October sess. 1882.

And now, to wit, this 15th day of November, A. D. 1882, on motion of Henry P. Brown, esq., assistant United States attorney, a writ of certiorari is allowed in the above cause for its removal from the court of common pleas No. 2, for the county of Philadelphia, to this court.

And thereupon on the day and year last aforesaid a writ of certiorari issued and was returned with record annexed in the words following, to wit:

6 UNITED STATES OF AMERICA,
Eastern District of Pennsylania, set:

The President of the United States to the honorable the judges of the court of common pleas No. 2, for the county of Philadelphia & State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas No. 2 suit has been commenced against John F. Hartranft, collector of customs for the district of Philadelphia, by John H. Wiegmann, and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, of your September term, 1882, No. 510, which said suit as it is said is still pending before you in the said court of common pleas No. 2 undetermined; and whereas on the application of the said John F. Hartranft, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiffs to the said John F. Hartranft, collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiffs to the United States of America, and praying that a writ of certiorari may be immediately issued

by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 2, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress, in such case made and provided:

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of December next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of November, A. D. 1882, and in the 107th year of the Independence of the United States.

[L. S.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.

6½ (Indorsed:) No. 38. October sess., 1882. Circuit court, U. S. Wiegmann et al. vs. Hartranft, collector, &c. Writ of certiorari. Returned & filed January 8, 1883.

Pleas and all things touching or concerning the same we certify and send together with this writ. Witness our hands and seals.

Dec'r 21st, 1882.

J. I. CLARK HARE. [SEAL.]
JAMES T. MITCHELL. [SEAL.]

7 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, set.:

Among the records and proceedings of the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 510, Sept'r term, 1882, to wit:

Docket entries, September term, 1882.

(On the margin:) F. P. Prichard. 510. J. K. Valentine, 11, 11, '82.

JOHN H. WIEGMANN, AND FREDERICK W. Wiegmann, trading as J. H. Wiegmann and son,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

Sums. case, exit Oct. 23, 1882. Ret. 1st Mar.; Nov., 1882, served.

Nov. 18, 1882, certiorari from circuit court of U. S. brought into office.

Nov. 27, 1882, narr. filed.

Certified from the record Dec. 21, 1882.

[SEAL.]

E. J. LINDSAY,
Pro Proth'y.

8 C. P. No. Sept. term, 1882.

JOHN H. WIEGMANN AND FREDERICK W. Wiegmann, trading as J. H. Wiegmann and Son,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.
No. —.

Issue summons, case returnable first Monday November, 1882.
FRANK P. PRICHARD,
Att'y for Pl'ff.

Oct. 23, 1882.
To Proth'y, C. P.

(Endorsed:) 510. Sept. term, 1882. C. P., No. 2. Wiegmann vs. Hartranft. Præcipe for sum's. Case filed Oct. 23, '82. Prichard.

9 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, greeting:

We command you that you summon John F. Hartranft, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas No. 2, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of November next, there to answer John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, of a plea of trespass on the case, etc., and have you then there this writ.

Witness the honorable J. J. Clark Hare, president of our said court, at Philadelphia, the twenty-third day of October, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] W. MACCANN,
Pro Prothonotary.

9½ (Indorsed:) 510. Sept. term, 1882. C. P., No. 2. Wiegmann *vs.* Hartranft. Summons Case. Prichard.

Served John F. Hartranft, residing at 2015 Spruce street, by leaving, October 31, 1882, a true and attested copy of the within writ at his dwelling house with an adult member of his family.

So answers.

GEO. J. VAN HOUTEN,
Deputy Sheriff.
ENOCH TAYLOR, *Sheriff.*

10 JOHN H. WIEGMANN ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } C. P., No. 2. Sept. term, 1882. No. 510.

The Proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y. for Def't.

Nov. 11th, 1882.
To Proth'y, C. P.
(Endorsed:) 510. Sept. T., 1882. C. P., No. 2. John H. Wiegmann et al. vs. John F. Hartranft, collector, &c. Order of appearance. Filed Nov. 11, '82. John K. Valentine, att'y for def't.

11 No. 510.

In the court of common pleas No. 2, for the county of Philadelphia, September term, one thousand eight hundred and eighty-two.

PHILADELPHIA COUNTY, *ss:*

John F. Hartranft, collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, of a plea of trespass on the case, &c. Whereupon the said John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, by Frank P. Prichard, their attorney, complain for that whereas;

12 And also, for that whereas the defendant, on the twenty-first day of October, in the year of our Lord one thousand eight hundred and eighty-two, at the county aforesaid, was indebted to the plaintiffs in the sum of fifty thousand dollars for goods then and there sold and delivered by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for goods then and there bargained and sold by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for work then and there done, and materials for the same provided by the plaintiffs for the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there lent by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiffs;

And also in the further sum of fifty thousand dollars, for money found to be due from the defendant to the plaintiffs on an account then and there stated between them;

And also in the further sum of fifty thousand dollars, for interest then and there due and payable, for the forbearance by the plaintiffs at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid,

at the county aforesaid, in consideration of the several last mentioned premises, respectively, then and there promised the plaintiffs to pay the plaintiffs the said several last mentioned moneys, respectively, on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

JOHN DOE,
RICHARD ROE, } *Pledges, &c.*

FRANK P. PRICHARD,
Att'y for Pl'ff.

Nov. 27, 1882.

12¼ (Indersed:) 510. Sept. term, 1882. Court of common pleas No. 2. John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann & Son, vs. John F. Hartranft, collector of customs for the district of Phila. Narr. in assumpsit. Enter rule to plead in eight days, or judgment, sec. reg. Filed Nov. 27, 1882. Frank P. Prichard, att'y for pl'ffs. Nov. 27, 1882.

12½ *Name of importer (for all importations), John H. Wiegmann & Son.*

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of the entry at the custom-house.
1	Shells unmanufactured..	Denmark & P. R. R	London	Dec. 7, 1882..	Dec. 30, 1882
2	" " ..	Persian Monarch & P. R. R..	"	April 12, "	May 3, "

	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.
1	Jan. 3, 1882 / June 11, "	41 70	June 1, 1882.	June 10, 1882	Aug. 1, 1882.
2	May 6, " / June 11, "	60 70	" 1, " .	" 10, "	" " "

13 And afterwards, to wit, on the 14th day of February, A. D. 1883, the defendants, by *their* attorney, comes into our said court here and files his plea, which being read, is as follows, to wit:

C. C. U. S., Oct. sess., 1882.

JOHN H. WIEGMANN ET AL. *vs.* JOHN F. HARTRANFT. } No. 38.

And the said defendant, by John K. Valentine, esq., comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise, in manner and form, as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Att'y for Def't.

(Endorsed:) 38. Oct. sess., 1882. C. C. U. S. John H. Wiegmann et al. vs. John F. Hartranft, collector, &c. Plea filed February 14, 1883. John K. Valentine, att'y for def't.

14 And afterwards it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 5th day of October, A. D. 1883, came the parties aforesaid, and the jurors of the jury aforesaid being called came, to wit:

1. John M. Saltsman,
2. Samuel H. Reed,
3. William Stemple,
4. Robert Neilson,
5. James Potts,
6. George D. Dixon,
7. George Pownall,
8. Robert Abel,
9. Franklin Reed,
10. Sylvester Coleman,
11. Paul W. Sloan,
12. Abraham Barker,

who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmation aforesaid, respectively do say that they find as follows, to wit:

Plaintiff imported into the United States from London, in December, 1881, and May, 1882, a quantity of shells, on which he paid duties June 11, 1883.

15 Among these shells were:

37½ doz. regius murex,
8 " green ears,
3 " white ears,

valued at $71.68, on which the collector imposed a discriminating duty of 10 %, or $7.16, as the products of a country east of the Cape of Good Hope.

12 doz. green snails,
27 " Lord's Prayers,
12 " mottoes,
9 " Turk's caps,
3 " magpies,
8 " snails,
1 " trocus,
16 " green ears,
3 " white "

valued at $125.70, on which the collector imposed a duty of 35 %, or $44.09, as manufactures of shells.

The testimony in regard to these shells was as follows:

FREDERICK W. WIEGMANN.—These shells were purchased in London. The merchants there obtain them from all parts of the world; they are cleaned and prepared for market there; the epidermis is first cleaned
16 off and then the shells are ground or polished for the market; they are cleaned by acid; they are ground on an emery wheel to expose the pearly interior; the purpose of both operations is to fit the shells for market; we sell them for ornaments; we import them for the sea-shore and sometimes we sell them for buttons, handles to penknives, &c.; there is no difference in name and use between the shells ground on the emery-

wheel and those not ground; the Lord's-prayer shell is sold for the same purpose; there is no new use.

Dr. JOSEPH LEIDY [regius murrex shown witness.]—That comes from Panama. [Green ear shown witness.] That is from the Pacific coast. [Two white ears shown witnees.] One of these is from the west coast of Africa and the other from Japan. Most shells have three layers; they have the thin brown skin, the outside layer, like the common freash-water mussel; then they have an inner layer, which is very brilliant. Very frequently the water is sufficient to wear off the skin and they show the dull layer on the outside. By artificial means that opaque
17 whitish layer is ground off by means of a wheel and the inner layer is exposed, which presents that inner pearly appearance. [Samples shown witness.] These shells have had the outer layer ground off so as to exhibit the beautiful inner layer; that has been done by the application of a wheel and afterward by polishing.

Q. There is something here called the Lord's Prayer. I do not suppose you know it by that name, but please tell us about it.

A. Well, I understand its nature. The shell happens to be of the kind which is very frequently imported and used as an ornament without any alteration whatever. The outer covering was taken off in the shape of letters by first covering the letters with wax or grease, and then covering that with lime, having in the mean time eaten out the letters by acid or by etching.

The object of taking off the epidermis is simply to show the internal beauty for the purpose of ornament, and the object of taking off
18 the second layer is the same, simply for the purpose of ornament.

The jury find that the regius murex, green ears, and white ears are products of countries west of the Cape of Good Hope, as above testified, and that the discriminating duty on them amounted to $7.16, which, with interest to October 5th, 1883, amounts to $7.72.

The jury find that the green snails, Turk's caps, magpies, snails trocus, green ears, and white ears have been ground upon an emery, wheel in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $25.98, which, with interest to October 5th, 1883, amounts to $28.03.

The jury also find that the Lord's Prayers and mottoes have been etched with acid in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $18.11, which, with interest to October 5, 1883, amounts to $19.54.

19 RECAPITULATION.

Discriminating duty	$7 72
Duty on ground shells	28 03
Duty on etched shells	19 54
	$55 29

And the court reserved the following points:

1. If the court should be of opinion that both the shells ground on an emery wheel and the shells etched with acids in the manner found by the

jury were not liable to duty as "manufactures of shells," but were entitled to be admitted free as "shells unmanufactured," then judgment to be entered in favor of the plaintiff for fifty-five dollars and twenty-nine cents.

2. If the court should be of the opinion that the shells etched by acids in the manner found by the jury were liable to duty as manufactures of shells, but that the shells ground on an emery wheel as found by the jury were not so liable, then judgment to be entered in favor of the plaintiff for thirty-five dollars and seventy-five cents.

20 3. If the court should be of opinion that both the shells ground on an emery wheel and those etched by acids were liable to duty as "manufactures of shells," then judgment to be entered for plaintiff for seven dollars and seven-two cents only, being the amount of discriminating duty on shells found by the jury to have been imported from countries west of the Cape of Good Hope.

And afterwards, to wit, on the 8th day of October, A. D. 1883, the defendant, by his attorney, files in our said court here a motion for a new trial, and reasons, which being read, is as follows, to wit:

C. C. U. S., E. D. of Pa., Oct. sess., 1882.

JOHN H. WIEGMANN ET AL.
vs. } 38.
JOHN F. HARTRANFT, COLLECTOR, &C.

And now, this 8th day of October, 1883, the defendant, by his attorney, John K. Valentine, esquire, attorney for the United States for the
21 eastern district of Pennsylvania, moves for a rule on the plaintiffs in the above case to show cause why a new trial should not be granted, and assigns the following reasons therefor:

1. Because the verdict was against the evidence.
2. Because the verdict was against the weight of the evidence.
3. Because the learned judge erred in charging the jury that under the evidence their verdict should be for the defendant.

JOHN K. VALENTINE,
Att'y for the Def't.

OCT. 8, 1883.

(Endorsed:) 38. Oct. sess., 1882. C. C. U. S., E. D. of Pa. John H. Wiegmann et al. vs. John F. Hartranft, collector, &c. Motion & reasons for new trial. Filed October 8, 1883.

22 And afterwards, to wit, on the 22d day of October, A. D. 1883, this cause came on to be heard on motion for a new trial, and the same having been argued by the counsel for the respective parties, the court filed the following opinion, to wit:

JOHN H. WIEGMANN ET AL.
vs. } Oct. sess., 1882, No. 38.
JOHN F. HARTRANFT, COLLECTOR, &C.

That in order to render the shells subject to duty as manufactures of shells something more must be done than simply to remove the outer *ser-*

vice either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells.

Whereupon the court refuse the motion for a new trial and order judgment to be entered on the verdict in favor of the plaintiffs and
23 against the defendants in the sum of fifty-five $\frac{29}{100}$ dollars ($55.29).

Whereupon judgment is entered accordingly.

And afterwards, to wit, on the 22d day of October, A. D. 1883, John K. Valentine, esq., attorney for defendant, moves the court for a certificate of probable cause in the words following, to wit:

C. C. U. S., Oct. Sess., 1882.

JOHN H. WEIGMAN ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 38.

And now, October 22, 1883, John K. Valentine, esq., attorney for the defendant, moves for a certificate of probable cause in the above case.

Whereupon it is ordered that a certificate of probable cause be entered.

24 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between John H. Wiegmann and Frederick W. Wiegmann, trading as J. H. Wiegmann and Son, plaintiffs, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia this 24th day of March, A. D. 1884, and in the 108th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk, &c.

25 JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error.
vs.
JOHN H. WIEGMANN AND FREDERICK W. Wiegmann, trading as J. H. Wiegmann and Son, defendant in error.

Assignments of error.

Because the learned judges in the court below erred—

1. In entering judgment in favor of the plaintiffs below upon the following point of law reserved: "If the court should be of opinion that both the shells ground on an emory-wheel and the shells etched with acid,

in the manner found by the jury were not liable to duty as 'manufactures of shells,' but were entitled to be admitted free as 'shells unmanufactured,' then judgment to be entered in favor of the plaintiffs for fifty-five dollars and twenty-nine cents."

26 "2. In holding "that in order to render the shells subject to duty as manufactures of shells something more must be done than simply to remove the outer surface either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells."

(Indorsement on cover:) No. 510. John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff in error vs. John H. Weigman and Frederick W. Weigman, trading as J. H. Weigman & Son. E. Pennsylvania. C. C. U. S. Filed 4th April, 1884.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 511. 243

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

ANTON WINTERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED APRIL 4, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 511.

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

ANTON WINTERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 UNITED STATES,
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment, in a suit before you, between Anton Winters, plaintiff, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant, in a plea of tresspass on the case, a manifest error has intervened to the great damage of the said John F. Hartranft, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this tenth day of November, A. D., one thousand eight hundred and eighty-three, and in the one hundred and eighth year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U.

2 THE UNITED STATES OF AMERICA, *ss*:

To Anton Winters, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this thirteenth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

WM. BUTLER, *Judge.*

I accept service of the within citation for the within-named Anton
2½ Winters, and direct the clerk to enter my appearance as attorney for said Anton Winters.

FRANK P. PRICHARD,
Att'y for Anton Winters.

Nov. 13, '83.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1882. No. 39.

It is thus contained:

Be it remembered, that on the 15th day of December, A. D. 1882, the defendant, by his attorney, John K. Valentine, esq., appears in open court and presents a petition for a writ of certiorari, which, being read, is as follows, to wit:

4 In the the circuit court of the United States, for the eastern district of Pennsylvania. In the third circuit.

The petition of John F. Hartranft, collector of customs for the district of Philadelphia, respectfully represents, that a suit has been commenced by summons case against him as defendant, by Anton Winters, in the court of common pleas No. 2, for the county of Philadelphia, in the State of Pennsylvania, to September term, 1882. No. 663.

That the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of the customs for the district of Philadelphia; the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs, to the said defendant as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court, to the said court of common pleas, No. , for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

J. F. HARTRANFT,
Coll.

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn to and subscribed before me this 11th day of November, 1882.

[L. S.] WM. LARZELERE,
Notary Public.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him, and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

4¼ (Indorsed:) No. 39. October sessions, 1882. Circuit court, United States, eastern district of Pennsylvania. In the third circuit. Anton Winters *vs.* John F. Hartranft, collector, &c. Petition for certiorari. John K. Valentine, attorney for petitioner. Filed November 15, 1882.

5 Whereupon the court made the following order, to wit:

WINTERS
vs.
HARTRANFT, COLLECTOR, &C. } No. 39. October session, 1882.

And now, to wit, this 15th day of November, A. D. 1882, on motion of Henry P. Brown, esq., assistant United States attorney, a writ of certiorari is allowed in the above cause for its removal from the court of common pleas, No. 2, for the county of Philadelphia, to this Court.

And thereupon, on the day and year last aforesaid, a writ of certiorari issued and was duly returned with the record annexed in the words following, to wit:

6 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

The President of the United States to the honorable the judges of the court of common please, No. 2, for the county of Philadelphia, & State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas, No. 2, suit has been commenced against John F. Hartranft, collector of customs for the district of Philadelphia, by Anton Winters, of your September term, 1882, No. 663, which said suit as it is said is still pending before you in the said court of common pleas, No. 2, undetermined; and whereas on the application of the said John F. Hartranft, collector, &c., to the circuit court of the United States for the eastern district of Philadelphia, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office, as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John F. Hartranft, collector, &c., aforesaid, for duties on certain merchandise, claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas, No. 2, to send to the said circuit court of the United States the record and proceedings

in the said cause, according to the provision of the act of Congress in such cases made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of December next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of November, A. D. 1882, and in the 107th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

6½ (Indorsed:) No. 39. October sess., 1882. Circuit court, U. S. Winters vs. Hartranft, collector, &c. Writ of certiorari. Returned & filed January 8, 1883.

Pleas and all things touching or concerning the same we certify and send, together with this writ.

Witness our hands and seals December 21st, 1882.

J. I. CLARK HARE. [SEAL.]
JAMES T. MITCHELL. [SEAL.]

7 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, set.

Among the records and proceedings of the court of common pleas, No. 2, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 663, Sept'r term, 1882, to wit:

Docket entries.—September term, 1882.

(On the margin:) F. P. Prichard, 663.

Anton Winters vs. John F. Hartranft, collector of customs for the district of Philadelphia.

Sum's case. Exit Oct. 31, 1882. Ret. 1st Mon. Nov., 1882. Served. Nov. 18, 1882. Certiorari from circuit court of U. S. brought into office.

Nov. 27, 1882. Narr. filed.

Certified from the record. Dec. 21, 1882.

[SEAL.] E. J. LINDSAY,
Per Proth'y.

8 ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

C. P., No. . Sept. T. 1882. No. . .

Issue summons case returnable first Monday November, 1882.
FRANK P. PRICHARD,
Att'y for Pl'ff.

To Proth'y C. P.

(Endorsed:) 663. September term, 1882. C. P. No. 2. Anton Winters vs. John F. Hartranft, collector of customs, &c. Præcipe for summons case. Filed Oct. 31, 1882. Frank P. Prichard, att'y for pl'ff. Oct. 31, 1882.

9 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, greeting:

We command you that you summon John F. Hartranft, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges at Philadelphia, at our court of common pleas, No. 2, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of November next, there to answer Anton Winters of a plea of trespass on the case, etc. And have you then and there this writ.

Witness the honorable J. I. Clark Hare, president of our said court, at Philadelphia, the thirty-first day of October, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] F. C. MANDERSON,
Pro Prothonotary.

9½ (Indorsed:) 663. Sept. term, 1882. C. P. No. 2. Anton Winters vs. John F. Hartranft, collector of customs for the district of Philadelphia. Summons. Case. Prichard.

Served John F. Hartranft, collector, &c., by giving to him November 1, 1882, a true and attested copy of the within writ and making known to him the contents thereof.

So answers.

GEO. JUNN HUNTER,
Deputy Sheriff.
ENOCH TAYLOR, *Sheriff.*

10 ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } C. P. No. 2. Sept. term 1882. No. 663.

The proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y for Def't.

Nov. 11, 1882.

To Proth'y, C. P.

(Endorsed:) 663. Sept. term, 1882. C. P. No. 2. Anton Winters vs. John F. Hartranft, collector, &c. Order for appearance. Filed Nov. 11, '82. John K. Valentine, att'y for def't.

11 In the court of common pleas No. 2 for the county of Philadelphia, September term, one thousand eight hundred and eighty-two, No. 463.

PHILADELPHIA COUNTY, *ss:*

John F. Hartranft, collector of customs for the district of Philadelphia, late of the county aforesaid, was attached to answer Anton Winters of a plea of trespass, on the case, &c. Whereupon the said Anton Winters, by Frank P. Prichard, his attorney, complain for that whereas—

12 And also, for that whereas the defendant, on the thirteenth day of October, in the year of our Lord one thousand eight hundred and eighty-two, at the county aforesaid, was indebted to the plaintiff in the sum of fifty thousand dollars for goods then and there sold and delivered by the plaintiff to the defendant at his request;

And also in the further sum of fifty thousand dollars, for goods then and there bargained and sold by the plaintiff to the defendant at his request;

And also in the further sum of fifty thousand dollars, for work then and there done, and materials for the same provided by the plaintiff for the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there lent by the plaintiff to the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there paid by the plaintiff for the use of the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiff;

And also in the further sum of fifty thousand dollars, for money found to be due from the defendant to the plaintiff on an account then and there stated between them;

And also in the further sum of fifty thousand dollars, for interest then and there due and payable for the forbearance by the plaintiff, at the defendant's request, for moneys before then due and owing from the defendant to the plaintiff;

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last mentioned premises, respectively then and there promised the plaintiff to pay the said several last-mentioned moneys respectively, on request; yet the de-

fendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of the plaintiff fifty thousand dollars.

And therefore he bring suit, &c.

JOHN DOE,
RICHARD ROE. } *Pl ges, &c.*

FRANK P. P. RICHARD.
Att'y for pl'ff.

Nov. 27, 1882.

(Indorsed:) 663 Sept. term 1882. Court of common pleas No. 2. No. Anton Winters vs. John F. Hartranft, collector of customs for the district of Philada. Filed Nov. 27, '82. Frank P. Prichard, att'y for pl'ff. Nov. 27, '82.

13 *Bill of particulars. Name of importer (for all importations), Anton Winters.*

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Amount of duty illegally exacted.
1	Shells manufactured	Lydian Monarch and P. R. R	London	Mch. 31, 1882	177 30
2	" "	Assyrian Monarch and P. R. R	"	May 3, "	42 75
3	" " and Jews-harps.	Lydian Monarch and P. R. R	"	July 26, "	46 75

	Date of entry at custom.house.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
1	April 2, 1882	Apl. 25, 1882	June 8, 1882	June 17, 1882	Aug. 3, 1882
2	May 24, "	May 26, "	" "	" "	" "
3	July 24, "	July 21, " " 26, "	Aug. 18, "	Aug. 21, "	Oct. 30, "

O. G. HEMPSTEAD & SON,
Custom-House Brokers, No. 407 Library street, Philadelphia.

14 And afterwards, to wit, on the 14th day of February, A. D. 1883, the defendant, by his attorney, comes into our said court here and files his plea, which being read is as follows, to wit:

C. C. U. S. Oct. sess., 1882.

ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 39.

And the said defendant by John K. Valentine, esq., his attorney, comes and defends the wrong and injury when, &c., and saith that he did not un-

dertake or promise in manner or form as the said plaintiff have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Att'y for Def't.

(Endorsed:) 39. Oct. sess., 1882. C. C. U. S. Anton Winters vs. John F. Hartranft, collector, &c. Plea. Filed February 14, 1883. John K. Valentine, att'y for def't.

15 And afterwards it is ordered that a jury come to try the issue joined in this cause.

And afterwards, to wit, on the 5th day of October, A. D. 1883, came the parties aforesaid, and the jurors of the jury aforesaid being called come, to wit:

1. John M. Saltsman.
2. Samuel H. Reed.
3. William Stemple.
4. Robert Neilson.
5. James Potts.
6. George D. Dixon.
7. George Pownall.
8. Robert Abel.
9. Franklin Reed.
10. Sylvester Coleman.
11. Paul W. Sloan.
12. Abraham Barker.

Who are duly empanelled, returned, chosen, tried, and sworn or affirmed, to speak the truth in the issue joined in this case.

An afterwards, to wit, on the day and year last aforesaid the jurors aforesaid upon their oaths affirmations aforesaid, respectively do say that they find as follows, to wit:

Plaintiff imported into the United States, from London, in 1882, a quantity of shells. Among these shells were—

7 doz. rose murex.
27 " white cars.
16 715 regius murex.
32 doz. green cars.

Valued at $57.76, on which the collector imposed a discriminating duty of 10 % or $5.77, as the products of a country east of the Cape of Good Hope.

30 doz. motto cowries.
35 " banded snails.
79 " trocus.
87 " snails.
30 " white cars.
4 " Japan cars.
85 " turbo shells.
56 " green cars.
6 " red cars.
20 " pearl snails.
36 " Lord's prayers.

Valued at $451, on which the collector imposed a duty of 35 %, or, $157.94 as manufactures of shells.

The testimony in regard to these shells was as follows:

FREDERICK W. WEIGMAN. These shells were purchased in London; the

merchants there obtain them from all parts of the world; they are cleaned and prepared for market there; the epidermis is first cleaned off and then
17 the shells are ground or polished for the market; they are cleaned by acid; they are ground on an emery wheel to expose the pearly interior; the purpose of both operations is to fit the shells for market; we sell them for ornaments; we import them for the seashore, and sometimes we sell them for buttons, handles to penknives, &c.; there is no difference in name and use between the shells ground on the emery-stone and those not ground; the Lord's Prayer shell is sold for the same purpose; there is no new use.

Dr. JOSEPH LEIDY. [Regius murex shown witness.] That comes from Panama. [Green ear shown witness.] That is from the Pacific coast. [Two white ears shown witness.] One of these is from the west coast of Africa and the other from Japan. [Rose murex shown witness.] This comes from Panama. Most shells have three layers; they have the thin brown skin, the outside layer, like the common fresh-water mussel; then they have an inner layer which is very brilliant. Very frequently
18 the water is sufficient to wear off the skin and they show the dull layer on the outside; by artificial means that opaque whitish layer is ground off by means of a wheel and the inner layer is exposed, which presents that inner pearly appearance [samples shown witness]. These shells have had the outer layer ground off so as to exhibit the beautiful inner layer; that has been done by the application of a wheel, and afterward by polishing.

Q. There is something here called the Lord's Prayer. I do not suppose you know it by that name, but please tell us about it.

A. Well, I understand its nature. The shell happens to be of the kind which is very frequently imported and used as an ornament without any alteration whatever. The outer covering was taken off in the shape of letters by first covering the letters with wax or grease, and then covering that with lime, having in the mean time eaten out the letters by acid or by etching. The object of taking off the epidermis is simply to show the internal beauty for the purpose of ornament, and the object of taking off the second layer is the same, simply for the purpose of ornament.

19 The jury find that the regius murex, green ears, rose murex, and white ears are products of countries west of the Cape of Good Hope and that the discriminating duty on them amounted to $5.77, which, with interest to October 5th, 1883, amounts to $6.22.

The jury also find that the banded snails, trocus snails, white ears, Japan ears, turbo shells, green ears, red ears, and pearl snails have been ground upon an emery wheel in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $130.49, which, with interest to October 5th, 1883, amounts to $140.91.

The jury also find that the Lord's Prayer and the motto cowries have been etched with acid in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $27.45, which, with interest to October 5th, 1883, amounts to $29.43.

The jury also found that the plaintiff imported in the same importa-

tions 34 gross Jew's-harps, valued at $138.61, on which the collector imposed a duty of 50%, or $69.30, as toys. The said Jew's-harps were not toys, but musical instruments liable to a duty of 30%. The excess of duty collected amounted to $27.72, which, with interest to October 5th, 1883, amounts to $29.93.

Recapitulation.

Discriminating duty	6 22
Duty on ground shells	140 91
Duty on etched shells	29 43
Excess of duty on Jew's-harps	29 99
	$206 55

And the court reserved the following points:

1. If the court should be of opinion that both the shells ground on an emery wheel and the shells etched with acids in the manner found by the jury were not liable to duty as "manufactures of shells," but were entitled to be admitted free as "shells unmanufactured," then judgment to be entered in favor of the plaintiff for two hundred and six dollars and fifty-five cents.

2. If the court should be of opinion that the shells etched by acids in the manner found by the jury were liable to duty as manufactures of shell, but the shells ground on an emery wheel as found by the jury were not so liable, then judgment to be entered in favor of the plaintiff for one hundred and seventy-seven dollars and twelve cents.

3. If the court should be of opinion that both the shells ground on an emery wheel and those etched by acids were liable to duty as manufactures of shell, then judgment to be entered for the plaintiff for thirty-six dollars and twenty-one cents only, being the amount of excessive duty on Jew's-harps, and of discriminating duty on shells found by the jury to have been imported from countries west of the Cape of Good Hope.

And afterwards, to wit, on the 8th day of October, A. D. 1883, the defendant by his attorney, files in our said court here a motion for a new trial, and reasons which, being read, is as follows, to wit:

C. C. U. S., E. D. of Pa. Oct. sess., 1882.

ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 39.

And now, October 6, 1883, the defendant in the above case by his attorney, John K. Valentine, esq., attorney for the United States for the eastern district of Pennsylvania, moves for a rule upon the plaintiff in the above case to show cause why a new trial should not be granted, and assigns the following reasons therefor.

1. Because the verdict was against the evidence.
2. Because the verdict was against the weight of the evidence.

3. Because the learned judge erred in charging the jury that
23 under the evidence their verdict should be for the defendant.

JOHN K. VALENTINE,
Attorney for Def't.

(Endorsed): 39. Oct. sess. 1882. C. C. U. S., E. D. of Pa. Anton Winters vs. John F. Hartranft, collector, &c. Motion and reasons for a new trial. Filed October 8, 1883. John K. Valentine, att'y for def't.

24 And afterwards, to wit, on the 22d day of October, A. D. 1883, this cause came on to be heard on motion for a new trial, and the same having been argued by the counsel for the respective parties the court filed the following opinion, to wit:

WINTERS
vs.
HARTRANFT.

That in order to render the shells subject to duty as manufactures of shells something more must be done than simply to remove the outer surface either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells.

Whereupon the court refuse the motion for a new trial and order judgment to be entered on the verdict in favor of the plaintiff and against the defendant in the sum of two hundred and six $\frac{55}{100}$ dollars ($206.55).

25 Whereupon judgment is entered accordingly.

And afterwards, to wit, on the day and year last aforesaid, John K. Valentine, esq., attorney for defendant, moves the court for a certificate of probable cause, in the words following, to wit:

ANTON WINTERS
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } C. C. U. S., E. D. of Pa. Oct. sess., 1882. No. 39.

And now, October 22nd, 1883, John K. Valentine, esq., attorney for the defendant, moves for a certificate of probable cause in the above cause; whereupon

It is ordered that a certificate of probable cause be entered.

26 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between Anton Winters, plaintiff, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this 24th day of March, 1884, and in the 108th year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk Circuit Court U. S.

27 JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
ANTON WINTERS, DEFENDANT IN ERROR.

Assignment in error.

Because the learned judges in the court below erred:

1. In entering judgment in favor of the plaintiff below upon the following point of law reserved: "If the court should be of opinion that both the shells ground on an emery wheel and the shells etched with acids in the manner found by the jury, were not liable to pay duty as 'manufactures of shells,' but were entitled to be admitted free as 'shells unmanufactured,' then judgment to be entered in favor of the plaintiff for two hundred and six dollars and fifty-five cents."

28 2. In holding "that in order to render the shells subject to duty as manufactures of shells, something more must be done than simply to remove the outer surface, either by acids or mechanical means, and that while the shells retained their special form and character, they could not be classified as manufactures of shells."

(Indorsement on cover:) No. 511. John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff in error vs. Anton Winters. E. Pennsylvania C. C. U. S. Filed 4th April, 1884.

121-609-616

Office Supreme Court U. S.
FILED.
MAR 9 1887
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States

OCTOBER TERM, 1886.

JOHN F. HARTRANFT, COLLECTOR of customs for the district of Philadelphia, plaintiff in error,
vs.
JOHN H. WEIGMAN AND FREDERICK W. Weigman, trading as J. H. Weigman & Son.
No. 242.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

JOHN F. HARTRANFT, COLLECTOR of customs for the district of Philadelphia, plaintiff in error,
vs.
JOHN H. WEIGMAN AND FREDERICK W. Weigman, trading as J. H. Weigman & Son.
No. 242.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT OF THE CASE.

This case was tried at the same time, by the same court, jury, and counsel, and presents the same question for determination as No. 243 of this term. The subject is the customs duty on shells. The question is whether the shells described in the special verdict and questions reserved are "manufactures of shells" or "shells not manufactured." The shells were imported from London. They originally came from different parts of the earth, some from east of the Cape of Good Hope, others from the west of it. They were prepared as ornaments, by

grinding on an emery wheel and etching with acid, the epidermis, or external coat, and the first layer thereunder, being taken off to show the internal beauty of the shell; and in some of the shells letters or mottoes were cut by means of acid or etching. It is conceded judgment should be rendered for the plaintiff for $7.72, being amount of discriminating duty on shells found by the jury to have been imported from countries west of the Cape of Good Hope. The question was raised by a special verdict of the jury, and on questions reserved.

Special verdict.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmation aforesaid, respectively do say that they find as follows, to wit:

Plaintiff imported into the United States from London, in December, 1881, and May, 1882, a quantity of shells, on which he paid duties June 11, 1883.

Among these shells were: 37½ dozen regius murex, 8 dozen green ears, 3 dozen white ears, valued at $71.68, on which the collector imposed a discriminating duty of 10 per cent., or $7.16, as the products of a country east of the Cape of Good Hope.

Twelve dozen green snails, 27 dozen Lord's Prayers, 12 dozen mottoes, 9 dozen Turk's caps, 3 dozen magpies, 8 dozen snails, 1 dozen trocus, 16 dozen green ears, 3 dozen white ears, valued at $125.70, on which the collector imposed a duty of 35 per cent., or $44.09, as manufactures of shells.

The testimony in regard to these shells was as follows:

FREDERICK W. WIEGMANN. These shells were purchased in London. The merchants there ob-

tain them from all parts of the world; they are cleaned and prepared for market there; the epidermis is first cleaned off and then the shells are ground or polished for the market; they are cleaned by acid; they are ground on an emery wheel to expose the pearly interior; the purpose of both operations is to fit the shells for market; we sell them for ornaments; we import them for the sea-shore and sometimes we sell them for buttons, handles to penknives, &c.; there is no difference in name and use between the shells ground on the emery wheel and those not ground; the Lord's Prayer shell is sold for the same purpose; there is no new use.

Dr. JOSEPH LEIDY. [Regius murex shown witness.] That comes from Panama. [Green ear shown witness.] That is from the Pacific coast. [Two white ears shown witness.] One of these is from the west coast of Africa and the other from Japan. Most shells have three layers; they have the thin brown skin, the outside layer, like the common fresh-water mussel; then they have an inner layer, which is very brilliant. Very frequently the water is sufficient to wear off the skin, and they show the dull layer on the outside. By artificial means that opaque, whitish layer is ground off by means of a wheel, and the inner layer is exposed, which presents that inner pearly appearance. [Samples shown witness.] These shells have had the outer layer ground off so as to exhibit the beautiful inner layer; that has been done by the application of a wheel and afterward by polishing.

Q. There is something here called the Lord's Prayer. I do not suppose you know it by that name, but please tell us about it.

A. Well, I understand its nature. The shell happens to be of the kind which is very frequently imported and used as an ornament without any altera-

tion whatever. The outer covering was taken off in the shape of letters by first covering the letters with wax or grease, and then covering that with lime, having in the mean time eaten out the letters by acid or by etching.

The object of taking off the epidermis is simply to show the internal beauty for the purpose of ornament, and the object of taking off the second layer is the same, simply for the purpose of ornament.

The jury find that the regius murex, green ears, and white ears, are products of countries west of the Cape of Good Hope, as above testified, and that the discriminating duty on them amounted to $7.16, which, with interest to October 5, 1883, amounts to $7.72.

The jury find that the green snails, Turk's caps, magpies, snails, trocus, green ears, and white ears, have been ground upon an emery-wheel, in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $25.98, which, with interest to October 5, 1883, amounts to $28.03.

The jury also find that the Lord's Prayers and mottoes have been etched with acid, and in a manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $18.11, which, with interest to October 5, 1883, amounts to $19.54.

Recapitulation.

Discriminating duty	$7 72
Duty on ground shells	28 03
Duty on etched shells	19 54
	55 29

Questions reserved.

And the court reserved the following points:

(1) If the court should be of opinion that both the shells ground on an emery-wheel, and the shells etched with acids in the manner found by the jury were not liable to duty as "manufactures of shells," but were entitled to be admitted free as "shells unmanufactured," then judgment to be entered in favor of the plaintiff for $55.29.

(2) If the court should be of the opinion that the shells etched by acids in the manner found by the jury were liable to duty as manufactures of shells, but that the shells ground on an emery-wheel as found by the jury were not so liable, then judgment to be entered in favor of the plaintiff for $35.75.

(3) If the court should be of opinion that both the shells ground on an emery wheel and those etched by acids were liable to duty as "manufactures of shells," then judgment to be entered for plaintiff for $7.72 only, being the amount of discriminating duty on shells found by the jury to have been imported from countries west of the Cape of Good Hope.

Judgment.

And afterwards, to wit, on the 22d day of October, A. D. 1883, this cause came on to be heard on motion for a new trial, and the same having been argued by the counsel for the respective parties, the court filed the following opinion, to wit:

JOHN H. WIEGMANN ET AL. *vs.* JOHN F. HARTRANFT, COLLECTOR, &c.	October session, 1882, No. 38.

That in order to render the shells subject to duty as manufactures of shells, something more must be

done than simply to remove the outer *service*, either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells.

Whereupon the court refuse the motion for a new trial and order judgment to be entered on the verdict in favor of the plaintiffs and against the defendants in the sum of $55.29. Whereupon judgment is entered accordingly.

Assignments of error.

Because the learned judges in the court below erred—

(1) In entering judgment in favor of the plaintiffs below upon the following point of law reserved: "If the court should be of opinion that both the shells ground on an emory-wheel and the shells etched with acid in the manner found by the jury were not liable to duty as "manufactures of shells," but were entitled to be admitted free as 'shells unmanufactured,' then judgment to be entered in favor of the plaintiffs for $55.29."

(2) In holding "that in order to render the shells subject to duty as manufactures of shells something more must be done than simply to remove the outer surface, either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells."

The two clauses of the tariff act which raise the question to be decided in this case are:

Schedule M, sundries.—Revised Statutes, page 481: "Shells, manufactures of, thirty-five per centum ad valorem."

Section 2505, *the free list.*—Revised Statutes, page 488: "Shells of every description, *not* manufactured."

The duty was levied under the clause first quoted. The circuit court ruled, substantially, under the facts found, they should have been admitted free under the second clause. The question for decision is, under the facts found, were the shells "manufactures of shells," or "shells *not* manufactured." The ultimate uses for which the shells are sold, as shown by the testimony of one of the importers (Rec., p. 8) are, for ornaments, for button molds, and for handles for penknives, &c. The shells, as shown by the same witness, were prepared for market in London.

In a state of nature the shells are composed of three layers. A thin brown skin, or epidermis, an outside layer like the common mussel, and an inside layer, very brilliant. By the use of an emery wheel or acids, the two external layers were removed, leaving only the inner layer which presents the pearly appearance. Some of the shells were lettered by eating out the letters by etching or acids. The object in taking off the epidermis and the second layer is for the purpose of ornament. When so prepared they are finished for market. The jury found the shells had been thus prepared for that purpose (Rec., p. 9). On the part of the United States it is contended, shells thus prepared

for their ultimate use in market by mechanical or chemical means, are shells manufactured according to the intent of the tariff act. By the *Act of the 14th of July*, 1862 (12 Stat. L., 557) a duty of 35 per cent. was first imposed on manufactures of shell.

By the *Act of the 14th of July*, 1870 (16 Stat. L., 280), shells of every description, *not* manufactured, were placed on the free list. Since the last date the two clauses under consideration remained unchanged until the 3d of March, 1883. The departmental interpretation of these clauses has not been uniform. By a reference to Synopsis of Treasury Decisions, it will appear, Decision 1090, dated April 4, 1872, rules, "Shells which have merely been cleaned and polished with acids cannot properly be classified as manufactures of shells." In No. 3339, dated August 15, 1877, it was ruled, "The manufactures of the merchandise consisted merely in the polishing of the shells, and the removal, by grinding or otherwise, of a portion of the surface; the character and condition of the articles have not been materially changed, and they still preserve their identity as shells." The collector had, in this case, not charged duty as on manufactures of shells, but as unmanufactured, and the decision, which was appealed from on another ground, was generally affirmed. No. 3843, dated January 11, 1879, refers to No. 1090, and declares "it is still in force."

On the other hand, No. 2896, dated July 18, 1876, ruled that, "as the shells imported are engraved by the application of acids, they were manufactured." No. 3813, dated December, 9, 1875, states, "It appears from your report that the shells in question consisted of two

different kinds, one portion being shells that had been cleaned by the use of the emery wheel and buffer, and the other that had been polished by the use of acids." After this statement of facts in this case, it was ruled that (after quoting No. 2896 and another unreported case of the 22d of November, 1876, to the same effect with approval).

> After these rulings, all the shells covered by the said appeals are dutiable at the rate of 35 per centum ad valorem as manufactures of shells, as they have been advanced by process of cleaning, grinding, and otherwise to a condition beyond that of crude, unmanufactured shells.

This last decision is the most full of any reported, and seems exactly to embrace all the shells described in this case. The first three decisions quoted are based upon what we conceive to be an erroneous idea, that, so long as the shells maintain their identity in form as shells, they cannot be considered as manufactures of shells. If those which are placed in the free-list were described as "shells of every description" and no more, there might be more color for this view; but as it is actually written, qualified as it is by the words "not manufactured," the enactment excludes from the free-list some shells. It excludes shells that are manufactured, and implies that, in the mind of the law-makers, there were shells which maintained their identity as shells and yet were manufactured, and such shells were not to be admitted free, and the two classes are intended to embrace all shells imported. Mere identity of form exists in a canvas before the artist has beautified it. Many of the rough shells are hateful deformities; but the acid or emery wheel, by removing two out

of the three layers of which they are composed, changes these deformities into ornaments. The knowledge and skill of man have fitted them for a new and pleasing use. Their principal value is derived from human labor. This we conceive to be a manufacture of shells.

The testimony of the importer states three uses for which his firm sells shells: ornaments, handles to penknives, buttons, &c.; and that the preparation of these shells was to fit them in the market for ornaments. They had then been finished for the final use for which they were intended. If this case is not the very one contemplated by the clause "shells, manufactures of," certainly the other two named are not. For if they were manufactured into buttons, and so imported, they would have a well-known commercial designation, and be classed as buttons. If manufactured and imported as handles on penknives, they would have another commercial name and be so classified. Unless the manufacture of shells into ornaments was that contemplated by the clause last quoted, there would be little or nothing left for it to operate upon, and the enactment would, by interpretation, become a dead letter.

There are few if any manufactures of shells other than for ornaments which do not bear some other well-known commercial name. The interpretation that shells not manufactured means the crude shells, and shells, manufactures of, means shells whose value has been enhanced by labor, knowledge, and skill, best conform to the policy which underlies the tariff legislation of the country. That policy is to build up skill and labor in our own country by increasing the demand for it; to encourage the bringing

in for manufacture raw material, whose main value is derived from its natural elements and capabilities, that here it may have added to it the value by which human labor or skill can improve it; to give employment to our own instead of foreign labor; to give an incentive and opportunity to acquire skill to our own rather than to people of other countries.

The act of the 3d of March, 1883, is substantially a re-enactment of the tariff laws as they existed at and immediately before that date, changed only with reference to its main purpose, as is shown by the title, to reduce the revenue. That purpose is illustrated throughout the act. The clause corresponding to "shells, manufactures of," in the old act is, by the act of 1883, changed to correspond with the view we take of the clause under consideration, and is as follows:

> Shells, whole or parts of, manufactures of every description, not specifically enumerated or provided for in this act, 25 per cent. ad valorem (22 Stat. L., 514).

The intent of the Legislature clearly was to ultimately decide what was meant and understood by the former enactment. It was not intended to impose a tax upon that which had not been taxed before, but to reduce tax upon the same articles included in the corresponding clause of the former tariff.

In this view it is a Congressional interpretation as to what Congress understood was meant by "shells, manufactures of," in the act it was intended as a re-enactment of. We maintain the shells described in this case are in no respect the shells made and occupied by their original

inhabitants. They are diminished in external size. They have two layers cut of three of which they were originally composed removed. Their external ugliness is changed to a pearl-like beauty. Without doubt, if one of them with the Lord's Prayer inscribed upon it were presented to its original maker, which, for the occasion, should be endowed with intelligence, moral responsibility, and speech, the astonished denizen of the deep would truthfully and concientiously say, if interrogated, "I never made that;" and we who claim to be so endowed, can just as truthfully say, that is the product of human labor, for which its original maker only furnished the material, which material was a shell, and this is a manufacture of that material.

The amount involved in this case is trivial, but the question is quite important, as the terms used in the two clauses "manufactures of" and "not manufactured" or "unmanufactured," are of frequent occurrence, both in the past and present tariff legislation. As illustrations, in the act of 1883 we find, among many others, "bones, manufactures of," "bones, not manufactured;" "horns, manufactures of," "horns, not manufactured;" "cork and cork bark, manufactured," "cork wood and cork bark, not manufactured;" "teeth, manufactured," "teeth, unmanufactured," "rattans and reeds, manufactured," "rattans and reeds, unmanufactured," &c. A manufacture is defined by Worcester as "Anything made or manufactured by hand or manual dexterity, or by machinery." As these ornamental shells, finished and lettered, had no existence, except as crude material, till their value and use were impressed upon them by the hand, dexterity, machinery, or applied

chemical knowledge of man, it is contended they are a manufacture.

The rule in the interpretation of these clauses, as we maintain, should be that, if the value of an import is materially enhanced, and the marketable character, or the purpose for which it is intended to be used as an ultimate use be first chiefly impressed upon it by man's labor or devices, it should be regarded as a manufacture. Although it might be expected that precedents on the question for decision would be abundant, yet it seems that, "as each case must be decided according to its own circumstances," but little light can be derived from any within our reach. In *Frazee* vs. *Maffet* (20 Blatch., 267) it is ruled "hay is not a manufactured article." *Kennedy* vs. *Hartranft* (9 Fed. Rep., 18) rules:

> If hoop-iron has been subjected to such mechanical treatment as to convert it into an article fitted for a special use, without any further mechanical treatment, and unfit for the general purpose to which hoop-iron is adapted, such an article is a manufacture of iron, dutiable as such, and not as hoop-iron.

In *Chicago Tire and Spring Works Company* vs. *Spaulding* (19 Fed. Rep., 412) it is ruled that "certain steel tire blooms, which had gone through several stages in the process of manufacture, were dutiable as articles of steel partially manufactured, and could not be classified as 'steel not otherwise provided for.'" In *Myers* vs. *Arthur* (91 U. S., 570) that the words "manufactures of metal" referred to manufactured articles in which metal formed a component part, and not to articles in which they have lost their form entirely, and have become the chemical in-

gredients of new forms." In *Lawrence* vs. *Allen* (7 How., 790), that india-rubber shoes, made by dipping a mold into the gum while in a liquid state, are manufactured articles." *Corning* vs. *Burden* (15 How., 252), that "the accomplishment of result by chemical action is called a process," and incidentally, that the formation, modification, or making of an article by such process is a manufacture.

G. A. JENKS,
Solicitor-General.

121-609-616

Supreme Court U. S.
FILED
MAR 10 1887
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
ANTON WINTERS.
} No. 243.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

JOHN F. HARTRANFT, COLLECTOR OF customs for the district of Philadelphia, plaintiff in error,
vs.
ANTON WINTERS.
No. 243.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This case was tried at the same time, by the same court, jury, and counsel, and presents the same question for determination as No. 242 of this term. The facts in the case, except as to the party defendant in error, are the same; the question raised is identical, and raised, as in the former case, by substantially the same special verdict and reserved questions; and the same counsel appears in both cases in this court.

Special verdict.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find as follows, to wit:

Plaintiff imported into the United States, from

London, in 1882, a quantity of shells. Among these shells were 7 dozen rose murex, 27 dozen white ears, 715 dozen regius murex, 32 dozen green ears, valued at $57.76, on which the collector imposed a discriminating duty of 10 per cent., or $5.77, as the products of a country east of the Cape of Good Hope.

Thirty dozen motto cowries, 35 dozen banded snails, 79 dozen trocus, 87 dozen snails, 30 dozen white ears, 4 dozen Japan ears, 85 dozen turbo shells, 56 dozen green ears, 6 dozen red ears, 20 dozen pearl snails, 36 dozen Lord's Prayers, valued at $451, on which the collector imposed a duty of 35 per cent., or $157.94, as manufactures of shells.

The testimony in regard to these shells was as follows:

FREDERICK W. WEIGMAN. These shells were purchased in London; the merchants there obtain them from all parts of the world; they are cleaned and prepared for market there; the epidermis is first cleaned off and then the shells are ground or polished for the market; they are cleaned by acid; they are ground on an emery wheel to expose the pearly interior; the purpose of both operations is to fit the shells for market; we sell them for ornaments; we import them for the sea-shore, and sometimes we sell them for buttons, handles to pen-knives, &c.; there is no difference in name and use between the shells ground on the emery stone and those not ground; the Lord's Prayer shell is sold for the same purpose; there is no new use.

Dr. JOSEPH LEIDY. (Regius murex shown witness.) That comes from Panama. [Green ear shown witness.] That is from the Pacific coast. [Two white ears shown witness.] One of these is from the west coast of Africa and the other from Japan. [Rose murex shown witness.] This comes from Panama. Most shells have three layers; they have the

thin brown skin, the outside layer, like the common fresh-water mussel; then they have an inner layer, which is very brilliant. Very frequently the water is sufficient to wear off the skin and they show the dull layer on the outside. By artificial means that opaque whitish layer is ground off by means of a wheel and the inner layer is exposed, which presents that inner pearly appearance. [Samples shown witness.] These shells have had the outer layer ground off so as to exhibit the beautiful inner layer. That has been done by the application of a wheel and afterward by polishing.

Q. There is something here called the Lord's Prayer; I do not suppose you know it by that name, but please tell us about it.

A. Well, I understand its nature; the shell happens to be of the kind which is very frequently imported and used as an ornament without any alteration whatever. The outer covering was taken off in the shape of letters, by first covering the letters with wax or grease, and then covering that with lime, having in the mean time eaten out the letters by acid or by etching. The object of taking off the epidermis is simply to show the internal beauty for the purpose of ornament, and the object of taking off the second layer is the same, simply for the purpose of ornament.

The jury find that the regius murex, green ears, rose murex, and white ears are products of countries west of the Cape of Good Hope, and that the discriminating duty on them amounted to $5.77, which, with interest to October 5, 1883, amounts to $6.22.

The jury also find that the banded snails, trocus snails, white ears, Japan ears, turbo shells, green ears, red ears, and pearl snails have been ground upon an emery wheel in the manner and for the purpose described in the above testimony. That the duty col-

lected on them as manufactures of shells amounted to $130.49, which, with interest to October 5, 1883, amounts to $140.91.

The jury also find that the Lord's Prayer and the motto cowries have been etched with acid in the manner and for the purpose described in the above testimony. That the duty collected on them as manufactures of shells amounted to $27.45, which, with interest to October 5, 1883, amounts to $29.43.

The jury also found that the plaintiff imported in the same importations 34 gross Jew's-harps, valued at $138.61, on which the collector imposed a duty of 50 per cent., or $69.30, as toys. The said Jew's-harps were not toys, but musical instruments liable to a duty of 30 per cent. The excess of duty collected amounted to $27.72, which, with interest to October 5, 1883, amounts to $29.93.

Recapitulation.

Discriminating duty	$6 22
Duty on ground shells	140 91
Duty on etched shells	29 43
Excess of duty on Jew's-harps	29 99
	206 55

Questions reserved.

And the court reserved the following points:

(1) If the court should be of the opinion that both the shells ground on an emory wheel and the shells etched with acids in the manner found by the jury were not liable to duty as "manufactures of shells," but were entitled to be admitted free as "shells unmanufactured," then judgment to be entered in favor of the plaintiff for $206.55.

(2) If the court should be of the opinion that the

shells etched by acids in the manner found by the jury were liable to duty as manufactures of shell, but the shells ground on an emery wheel, as found by the jury, were not so liable, then judgment to be entered in favor of the plaintiff for $177.12.

(3) If the court should be of the opinion that both the shells ground on an emery wheel and those etched by acids were liable to duty as manufactures of shell, then judgment to be entered for the plaintiff for $36.21 only, being the amounts of excessive duty on Jew's-harps and of discriminating duty on shells found by the jury to have been imported from countries west of the Cape of Good Hope.

Judgment.

And afterwards, to wit, on the 22d day of October, A. D. 1883, this cause came on to be heard on motion for a new trial, and the same having been argued by the counsel for the respective parties the court filed the following opinion, to wit:

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That in order to render the shells subject to duty as manufactures of shells, something more must be done than simply to remove the outer surface either by acids or mechanical means, and that while the shells retained their special form and character they could not be classified as manufactures of shells.

Whereupon the court refused the motion for a new trial and order judgment to be entered on the verdict in favor of the plaintiff and against the defendant in the sum of $206.55.

Whereupon judgment is entered accordingly.

Assignments of error.

Because the learned judges in the court below erred:

(1) In entering judgment in favor of the plaintiff below upon the following point of law reserved: "If the court should be of opinion that both the shells ground on an emery wheel and the shells etched with acids in the manner found by the jury were not liable to pay duty as 'manufactures of shells,' but were entitled to be admitted free as 'shells unmanufactured,' then judgment to be entered in favor of the plaintiff for $206.55."

(2) In holding "that in order to render the shells subject to duty as manufactures of shells, something more must be done than simply to remove the outer surface, either by acids or mechanical means, and that while the shells retained their special form and character, they could not be classified as manufactures of shells."

As this case is substantially identical, except as to the defendant in error, with No. 242 of this term, in which brief with argument has been filed, the brief of argument therein is referred to as applicable to this case.

G. A. JENKS,
Solicitor-General.

121-609-616

Nos. 242 and 243 October Term, 1886

IN THE

Supreme Court of the United States

John F. Hartranft, Collector of Customs for the District of Philadelphia

Plaintiff in Error

vs.

John H. Weigman and Frederick W. Weigman trading as J. H. Weigman & Son

Defendants in Error

John F. Hartranft, Collector of Customs for the District of Philadelphia

Plaintiff in Error

vs.

Anton Winters

Defendant in Error

BRIEF FOR DEFENDANTS IN ERROR

FRANK P. PRICHARD

For Defendants in Error

(F 84)

[illegible]

IN THE

Supreme Court of the United States.

October Term, 1886.

JOHN F. HARTRANFT, *Collector, etc.*,
vs.
JOHN H. WEIGMAN, *et al.* — No. 242.

SAME
vs.
ANTON WINTERS. — No. 243.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for Defendants in Error.

The sole question involved in the above cases is whether the shells imported by the plaintiffs below were "manufactures of shells," or "shells not manufactured."

If the former, the decision of the Court below was erroneous and should be reversed—if the latter, it should be affirmed.

In the course of the litigation to which the various Tariff Acts have given rise two definitions of a "manufacture" have been suggested, viz:

1. Any article to which labor has been applied for the purpose of fitting it for sale or use.

2. Any product of labor which has a new name, character and use distinguishing it from the materials or natural products out of which it has been produced.

The contention of the Government in the present cases is that the former definition is correct. To use the language of the Solicitor-General in his brief (page 7), "On the part of the United States it is contended that shells thus prepared for their ultimate use in the market by mechanical or chemical means are shells manufactured according to the intent of the tariff laws." The contention of the importer on the other hand, is that the latter definition is correct and that inasmuch as the labor applied to the shells was simply for the purpose of improving and ornamenting them, and did not produce a new article, having either distinctive name, character, or use, the result was not a "manufacture of shells."

If every article to which labor has been applied for the purpose of fitting it for sale or use is a manufacture, then it is difficult if not impossible to draw the line between articles "manufactured" and articles "not manufactured" in the tariff laws. Very few natural products are imported in the condition in which they are first found, and nearly all require some labor, both to obtain and to prepare them for market. Wool, for example, is washed and scoured, but no one has ever contended that the result was a manufacture of wool. Coral is cleaned and cut, but no one pretends that

the result is a manufacture of coral. Bones are cleaned and dried, but the result is certainly not a manufacture of bones. Cork is prepared and cut into sheets, but the resulting product cannot be said to be a manufacture of cork. In fact a decision which should announce as a principle of interpretation of the tariff laws that articles to which labor had been applied in preparing them for market were manufactured articles would revolutionize the whole design of these laws and draw within the tariff intended to protect manufactures almost every variety of raw material.

Such a construction of the word manufacture would be also in direct violation of the literal meaning of the word itself. To manufacture is literally to make by hand. Manual labor alone is not manufacture, unless something has been "made" by it. The thing "made" must of course have some new and distinctive name, character and use, otherwise it is not "made." To cut or to polish or to ornament an article is not to "make" it. The lapidist who cuts a diamond does not manufacture the diamond. It is improved; its natural beauties are disclosed; it is rendered more suitable for use, but it is still a diamond with its name, its character and its use unchanged. If, however, the jeweler takes the diamond and combines it with a small hoop of gold to make a ring the product is a manufacture. The ring has been "made" and has a new name and a distinctive use.

It is apparent that the question turns not on the amount of labor bestowed but upon its result. It may cost much more to cut a diamond than to make a ring, but the latter is still a manufacture while the former is not. The test of appearance hinted at rather than directly advocated in the argument for plaintiff in error is also unreliable. A little paint may alter the appearance of an article so that its owner would not recognize it, but it cannot be seriously contended that such an alteration is a manufacture of the article if its essential character and use are not changed. To use the illustration suggested in the brief for plaintiff in error, it does not follow because the animal would not recog-

nize its shell after it had been cleaned and polished, that it was not the same shell, but a manufactured article. A turtle would doubtless view with amazement the design carved upon his shell by his schoolboy captor, but the boy would probably be still more amazed if told that he had manufactured the turtle. The proposition that the mere alteration of the appearance of an article is not a manufacture of it, is almost self evident and needs no further argument.

We have endeavored to show that the definition of "manufacture" contended for by the government is unsound in principle. It remains only to show that it is unsupported by authority.

In *U. S.* vs. *Potts*, 5 Cranch, 284.

This Court (MARSHALL, C. J., delivering the opinion) held that round copper plates turned up and raised at the edges from four to five inches, were not manufactured, although labor had been applied to them for the purpose of fitting them for subsequent use in the manufacture of copper vessels, it appearing that they were still bought by the pound as copper and applied to the same use as ordinary copper, to wit, the manufacture of copper vessels. So in

Wolff vs. *Spaulding*, 26 Fed. Rep., 609.

Cast-iron plates imported for an ice machine were held not to be manufactures of iron.

And in a case in the United States Circuit Court for the District of New Jersey, unreported but cited and followed in Treasury Decision No. 1130, it was held that cork wood, cut into small squares was not a manufacture of cork, but simply a preparation of the raw material.

The principle here contended for was very clearly expressed by BLATCHFORD, J., in

Frazee vs. *Moffett*, 20 Blatch., 267.

In that case it was contended by the Government that hay pressed in bales ready for the market was a manufactured article, but the Court said, "Many articles are properly called raw which have undergone some manipulation. Cot-

ton is picked from the bolls and cleaned by ginning, and baled. Yet it is raw cotton in the bale. Wheat is cut, and the grains are thrashed out, and then subjected to a cleaning machine, and then bagged. Yet it is raw wheat in the bag. So with other grains. The cotton and the grains undergo such change and preparation, as exposure to light and natural or artificial heat and air, and the manipulation they receive, produce or allow, be it more or less. Yet neither the cotton nor the grains would be said to be manufactured. * * * Dried apples would not be called a manufactured article, though the apple is peeled, cored and sliced, and dried by exposure to the sun, and manipulation. The substance of dried apples is still apples."

It seems clear, therefore, both on principle and authority, that the labor test proposed by the Government is not the true test of a manufacture. What has already been said on this point applies with equal force in support of the test proposed by the importer, viz., whether the product is a new article having a distinctive name, character and use. This test draws a well-defined line between articles manufactured and not manufactured. It is easy of application, and is in harmony with the general design of the tariff laws. It is, moreover, abundantly supported by authority. In every case in which the question has arisen, whether in this Court or the lower Courts, the decision has rested upon the distinction between the mere application of labor to improve or ornament an article, or to prepare it for market, and the application of labor to produce a new article for a distinctive use.

In

Lawrence vs. *Allen* 7, Howard 785,

rubber shoes made by running the sap of the tree into moulds in the shape of a shoe, and then drying it, were held to be manufactures, because they were new articles having a distinctive name, and fitted for a special use, the Court saying:

"But it is contended that the India rubber shoe, as made in Brazil and imported thence, is not a 'manufactured article,' and hence is not within the clause in the Act of 1842, imposing a duty of thirty per cent. It may be conceded that this duty applies only to such an article. Yet, what constitutes a manufactured article?

"In some instances, and for some purposes, it may be one kind of process performed on what is found in a natural state, and in some, another kind. Thus the juice of the maple or of the cane is in some views manufactured when it is made into molasses or syrup, and in others, when again made into sugar or spirit from molasses. And so the juice of the grape is in one sense manufactured when converted into wine, and in another when made into brandy. And so is lye from ashes, when boiled down to potash or pearlash, manufactured into them. Here, the juice or sap of the India-rubber tree, while liquid or in its milky state, whether then called caoutchouc or some other name, is still a natural substance, and in its natural form; and in one sense, and to a certain extent, its being hardened and changed in color, no less than consistency and bulk, by fire and evaporation, whatever new form it may then be turned into, is a manufacture. It is so as much as butter and cheese is a manufacture from animal milk, or tar from turpentine, and rosin from tar. Yet from the words of the law, as well as its design, it is manifest that the India rubber is not meant to be taxed as a manufacture, though so hardened and changed, unless, at the same time, it is put into a shape which is suitable for use, and adapted with a design to be used in a way that is calculated to rival some domestic manufacture here, rather than merely to furnish a raw material in a more portable, useful and convenient form for other manufactures here. In the latter case, within the policy and purpose of the tariff law yielding protection, it is 'unmanufactured,' or, in other words, not made abroad for use in its existing form except as a raw material like pig-iron or pig-lead. But in the former case, within that policy and purpose, it is 'manufactured,' as it is made in a shape for use as a manu-

facture without being afterwards materially changed in form, and is designed to be so used, and hence comes in as a competitor with our own manufactures. * * * * Going to more technical definitions and to first principles, such a process to make the shoe is making an article by the hand, which was once the literal meaning of the word 'manufacture,' or *manu factum*, and in the more modern idea attached to the word, it is making an article, either by hand or machinery, *into a new form, capable of being used, and designed to be used, in ordinary life.*"

In *U. S.* vs. *Sarchet*, Gilpin, 273,

Defendant imported fifty-six casks containing small pieces of round iron. The Government claimed that the iron was bar or bolt iron. The importer claimed that they were chain links, and as such dutiable as manufactures of iron. Judge Hopkinson in charging the jury said :—

"Whether these pieces of iron cut into various lengths, of various diameters and shapes, are truly speaking nothing more nor less than bar or bolt iron cut into short pieces, but *not thereby changing their name and character, nor thereby becoming a new and different manufacture of iron*, or whether by this operation or process of cutting for a particular object, that is for the purpose of making chain links, they, *ipso facto, become a new and different manufacture of iron.* Whether in the language of commerce they become chain links and are so received and known by those engaged in the iron trade; these are the questions you are to decide."

In *Schriefer* vs. *Wood*, 5 Blatch., 215,

the question was whether animal charcoal and bone-dust were manufactures of bone. HALL, J., said :—

"When any *article of manufacture having a distinct name in the trade* and commerce of the country is produced by machinery, or by a chemical process from *any material or materials having a different commercial name* from the article pro-

duced, we may generally speak of the operation by which it is produced as a manufacture."

In *Kennedy* vs. *Hartranft*, 9 Fed. Rep., 18,

the question was whether a cotton tie which consisted simply of a band of iron and a buckle was a manufacture of iron, McKENNAN, J., charged the jury: "Now, in order to take it out of the category just referred to (hoop iron) and to place it in the list of manufactures, it is necessary that something should be done to it; that it should have been subjected to such manipulation *as would completely fit it for some special purpose, and that would to that extent unfit it for the general purposes to which hoop iron is adapted.*"

What has been said in the foregoing argument applies generally to the use of the word "manufacture" in the Tariff Acts. There is nothing in the particular clauses under construction to give the word as there used any special or different meaning. Congress has itself, interpreted the meaning of the clause in the free list, "shells of every description not manufactured" by the other clause in Schedule M, "Shells, Manufactures of" which is its antithesis. There are many manufactures of shells which do not necessarily destroy the form of the shell. If small shells are strung together to make a necklace, the form of the shell is preserved, but the result is a manufacture of shells. If chains are fastened to a shell and it is made into a hanging basket, the form of the shell is preserved, but the basket is a manufacture of shells. It was necessary to add the limitation "not manufactured" in order to prevent the clause of the free list from being extended to allow the free admission of shells which had been made up into other articles. The evident meaning of the two clauses taken together, is that shells shall be free, but that articles made out of shells shall be dutiable.

In the present case, there was no conflict of testimony. The facts as stated by all of the witnesses and as found by

the jury, were that the shells were collected from different parts of the world and taken to London, where they were cleaned and prepared for market. The epidermis was first cleaned off by acid and then some of the shells were ground on an emery wheel to expose the pearly interior or polished to improve their appearance. They were brought to this country where they are sold for ornaments and for the making of buttons, handles to penknives, etc. There is no difference in the name and use between the shells ground on the emery wheel and those not ground. In some case, in eating off the outer covering of the shell by acid, mottoes or the Lord's Prayer were produced on the shell by covering with wax the portion intended to stand as letters, but this was done on shells which were often used as ornaments without such etching and the evident design was not to use the mottoes and prayer for secular instruction or religious worship, but simply to make the shell more salable as an ornament. The jury have found by their verdict that there is no difference either in name or use between the shells which are merely cleaned and which the Government admits are not manufactured, and the shells which are ground and etched in the manner already described. It is submitted therefore, that they are not and cannot be, under the principles and authorities referred to, " manufactures of shells."

FRANK P. PRICHARD,

For Defendants in Error.